SUPREME COURT, U. S.

[redacted] 170

JUN 7 1968

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

W. WILLARD WIRTZ, Secretary of Labor,
Respondent,

vs.

LOCAL UNION NO. 705, HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS UNION, AFL-CIO,
Petitioner.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

GOODMAN, EDEN, ROBB, MILLENDER,
GOODMAN & BEDROSIAN,
By ERNEST GOODMAN,
Attorneys for Petitioner,
3200 Cadillac Tower,
Detroit, Michigan 48226,
965-0050.

Interstate Brief & Record Co., 356 E. Congress St., Detroit, Michigan 48226
WO. 2-8745—WO. 2-8732

SUBJECT INDEX

	Page
Opinions Below	2
Jurisdiction	2
Questions Involved	2-3
Statute Involved	3
Statement	3-6
Reasons for Granting the Writ	7-11
Conclusion	11
Appendix A—Opinion of Court of Appeals	13-20
Appendix B—Order Denying Petition for Rehearing	21
Appendix C—Order of District Court Denying Motion to Dismiss	22-27
Appendix D—Order of District Court Granting Defendant's Motion to Dismiss and Vacating Order of July 26, 1966	28
Appendix E—Statute Involved	29-30

INDEX TO AUTHORITIES CITED

United States Code:	
Title 28, p. 1254(1)	2
Title 29, p. 481(c)	5
Title 29, p. 482, 73 Stat. 519	3
Wirtz v. Local 9, 366 F.2d 911	6
Wirtz v. Local Union 125, 88 S.Ct. 639	6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

W. WILLARD WIRTZ, Secretary of Labor,
Respondent,

vs.

LOCAL UNION NO. 705, HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS UNION, AFL-CIO,
Petitioner.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Local Union No. 705, Hotel and Restaurant Employees and Bartenders Union, AFL-CIO, petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in this case on February 14, 1968.

OPINIONS BELOW

The opinion of the Court of Appeals (App. A infra p. 13) is reported at 389 Fed.2d 717. The Order of that court denying the Petitioner's petition for rehearing (App. B infra p. 21) is unreported. The Opinion and Order of the district court denying Motion to Dismiss (App. C infra p. 22) and the Order of the district court granting the Motion to Dismiss and vacating its previous Order (App. D infra p. 28), are unreported.

JURISDICTION

The decision of the Court of Appeals was rendered on February 14, 1968. A timely petition for rehearing was denied on March 11, 1968. The jurisdiction of this Court is invoked under 28 USC 154(1).

QUESTIONS INVOLVED

I.

Whether the Secretary of Labor may institute suit under the Labor-Management Reporting and Disclosure Act of 1959 to set aside a union election on the ground of the alleged ineligibility of a candidate for one office, where the only intra-union complaint as to the election had been as to the eligibility of candidates for another office, which complaint both the union and the Secretary had ascertained, after investigation, to be unfounded.

II.

Whether the Secretary of Labor has a duty, prior to bringing suit under the Labor Management Reporting and Disclosure Act of 1959 to set aside a union election for alleged irregularity, to fairly apprise the parent union of such irregularity, pursuant to a stated policy of informing the parent union of the irregularity in order to give it an opportunity for explanation or correction.

STATUTE INVOLVED

The pertinent provisions of the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 USC 482 are set forth in App. 1, infra p. 29.

STATEMENT

Petitioner local union represents bartenders, maids and kitchen and dining room help employed by hotels, motels and clubs in the Detroit metropolitan area.

In preparation for the 1965 election of local officers, a nominations convention was held on June 7, 1965. Godfrey Franklin, a union member, was nominated for the office of Vice President (App. 17a).*

On June 9th, the election committee disqualified two nominees, including Franklin, because they "were not in 24 months continuous good standing", and disqualified another nominee for a different reason (App. 25a). On June 22,

* "App." refers to Plaintiff-Appellant's appendix in the Court of Appeals.

Franklin appealed his disqualification to the President of the International Union. In order to permit Franklin to perfect his appeal, the elections were postponed from July 7, to July 20 (App. 18a).

Franklin's appeal asserted that he had "fully paid" his dues, and alleged the following (App. 15a-16a):

> "The purported reason for my declared ineligibility is a sham and a crude subterfuge. The real reason is that, contrary to the wishes of Secretary-Treasurer Wolfgang, I accepted nomination for the office of Vice President in opposition to her favorite candidate, incumbent Vice President Furay—whose own circumstances relative to the alleged dues provisions have, in fact, been no different from my own. This discriminatory abuse of my rights as a member of the Local and International violates the provisions of the Labor Management Reporting and Disclosure Act of 1959 * * *." (App. p. 15a-16a)

A detailed reply to this appeal was contained in a letter from the local signed by Myra Wolfgang, its Secretary-Treasurer (App. 17a). The appeal was denied by the General President of the International on July 9 (App. 29a), and then submitted to the International's General Executive Board which voted to uphold the decision of the General President (Myra Wolfgang and the General President not voting (App. 31a, 32a)).

At the local election, Furay was unopposed for the office of Vice President and was elected with 1788 votes, although Franklin ran as a sticker candidate and received 484 votes (App. 43a, 44a).

Franklin then complained to the Secretary of Labor. Following an investigation, the Area Director of the U. S. Department of Labor, Office of Labor-Management, on January 21, 1966, wrote a letter to the General President of

the International advising him that his investigation had disclosed two alleged violations of Section 401(e) of Title IV of the Labor-Management Reporting and Disclosure Act:

> "1. Members were not afforded a reasonable opportunity to be candidates, in that candidate qualifications were not uniformly applied.
>
> 2. Members in good standing were not provided a reasonable opportunity to nominate the candidates of their choice in that only department delegates were allowed to nominate for Local office." (App. p. 33a)

A copy of this letter was mailed to the local. The letter was written pursuant to "the policy of this office—to advise the parent union—in order that an opportunity is presented—to communicate any additional evidence on the violation or any action which the parent union proposes to take to remedy the violation" (App. 33a).

On January 24, attorneys for the local replied to this letter by answering point 2 in great detail, and by requesting clarifying information as to point 1 (App. 34a). The General President also replied by requesting further information (App. 41a).

No response was made to these letters, but on January 28, the Respondent filed his Complaint in the U. S. District Court, alleging the following violation of Sec. 401(e) of the Act (29 USC 481 (c)):

> "In the said election, defendant permitted Myra Wolfgang to run as a candidate for Secretary-Treasurer, and declared her as having been elected, although she was then not qualified to be a candidate for, and to hold, office under the eligibility requirements of applicable provisions of the constitution and bylaws of the defendant and of the Inter-

national; to wit, the requirement to have maintained good standing for a period of two years. The said requirement was at the same time applied to other candidates. The union altered its dues records or permitted the records to be altered so as to conceal the facts disqualifying Myra Wolfgang. Defendant thereby violated Section 401(e) of the Act (29 U.S.C. 481 (c))." (App. p. 6a)

Petitioner filed a Motion to Dismiss on the ground (among others) that, as to the subject matter of the Complaint, it had received "no previous notice from the Secretary, and has had no opportunity to investigate and determine the merit of the Secretary's Complaint" and that "there has been no effort to exhaust the Union remedies" (App. 9a).

The District Court denied the Motion (App. 45a). Petitioner filed a Motion for Rehearing (App. 53a) which was granted and an Order entered dismissing the Complaint "in the light of the decision in *Wirtz v. Local No. 9*, 366 F.2d 911" (App. 54a).

Respondent appealed and the Court of Appeals reversed on the basis of this Court's decision in *Wirtz v. Local Union 125*, 88 S.Ct. 639.

REASONS FOR GRANTING THE WRIT

1. This case concerns the breadth to be given the decision of this Court in *Wirtz v. Local 125, supra,* and the application of that decision to a fact situation where the union did not have a "fair opportunity" to redress a member's complaint.

It is clear that, in *Local 125,* this Court held that the Secretary's authority to file suit against a union under Section 402 was not to be restricted by the precise language or specifics of the member's intra-union complaint. But we understand that decision as also holding that the member's complaint must be sufficient to give the union "fair notice", "a fair opportunity to consider and redress", or "a fair opportunity to consider and resolve" the union practice, fraud, or wrongdoing which was later made the subject matter of the Secretary's suit.

This limitation seems to be implicit in the Court statement: "We—intimate no view on the merits of the Secretary's argument that a member's protest triggers a Section 402 enforcement action in which the Secretary would be permitted to file suit challenging any violation of Section 401 discovered in his investigation of the member's complaint."

It is Petitioner's position in this case that the member's (Godfrey) appeal from his own disqualification as a candidate for Vice President because of failure to remain in continuous good standing for 24 months, could not reasonably have suggested to the union that the nominee for secretary-treasurer (Wolfgang) may have been subject to a similar disqualification. Godfrey did suggest that, even if he was disqualified, his rival candidate for vice presi-

dent (Furay) should likewise be disqualified. However, the union investigated this allegation and ascertained that Godfrey was disqualified while Furay was not. The Secretary's investigation confirmed these conclusions since the Secretary's Complaint did not allege that Godfrey was improperly disqualified or that Furay should have been disqualified.

The Court of Appeals pointed out that Godfrey's appeal did state that Secretary-Treasurer Wolfgang had favored the rival candidate Furay over him; but this contention was only intended to point up the alleged unfairness in his own disqualification, vis-a-vis, Furay, and could not reasonably have suggested to the union that some basis existed for disqualifying Mrs. Wolfgang as a nominee for another office.

The holding of the Court of Appeals, in applying this Court's decision in *Local 125* to the facts of this case would make it mandatory for a union, in investigating a member's specific complaint of improper election practices where it found such complaint to be unfounded, to extend its investigation to cover every other office involved in the election to which such a complaint might have been, but was not made.

We do not believe that a member's unfounded complaint of unfair election practice as to a specific office should automatically compel the union to conduct an investigation as to all offices. The application of such a rule would have no relationship to the kind of "responsible union self-government" which this Court adverted to in *Local 125* as a Congressional concern "in allowing the unions great latitude in resolving their own internal controversies."

It places no burden upon a member nor does it require precise language in challenging elections which he believes were improperly conducted or candidates he believes

were ineligible, to require him to specify the challenged election or candidate or office. Of course, a challenge to an improper practice, rule or conduct which, if true, would necessarily affect all elections (such as inaccessibility of the polling place) might well place in question the entire election.

But where the eligibility of a single candidate for one of many offices is challenged on a specific ground relating peculiarly to that candidate, is it logical to compel the union to conduct an investigation as to the possibility that all other candidates for all other offices might be similarly disqualified, where no one has protested their nomination or election? We suggest not.

The burden placed by the Act upon a union, we submit, is to fairly investigate and remedy complaints of improper election practices, not to compel it to conduct a full-scale investigation every time a complaint of improper disqualification of a specific candidate is made, particularly where it proves to be ill-founded.

2. A second issue, independent of the question as to the adequacy of the member's complaint, is whether the Secretary had a duty to fairly inform the union of the alleged improper election practice before filing his complaint.

After the investigation of Godfrey's complaint, Respondent's area director sent a letter to the International Union, with a copy to the local, setting forth the alleged violations of Section 401(e). The letter was written pursuant to:

> ". . . the policy of this Office in appropriate case involving violation of Title IV to advise the parent union involved of the preliminary results of our investigation in order that an opportunity is presented to the parent union to communicate any additional evidence on the violation or any action which

the parent union proposes to take to remedy the violation." (App. p. 33a.)

The violation, later made the basis of the Complaint in this case, was then described in the letter as follows:

> "1. Members were not afforded a reasonable opportunity to be candidates, in that candidate qualifications were not uniformly applied." (App. p. 33a.)

A week later Respondent filed its Complaint and, in Paragraph III, described the same violation as follows:

> "defendant permitted Myra Wolfgang to run as a candidate . . . although she was then not qualified. . . . The said requirement was at the same time applied to other candidates. The union altered its dues records . . . so as to conceal the facts disqualifying Myra Wolfgang." (App. 6a.)

In view of the fact that Godfrey, in his intra-union appeals, had never claimed that Myra Wolfgang was disqualified, Respondent's failure, in the letter which followed his investigation, to inform the union of this charge, can only be characterized as a deliberate effort to conceal it from the union and thus make it impossible for the union to investigate and remedy the alleged violation—the express purpose for which the letter was purportedly written.

In its decision in *Local 125*, this Court emphasized the Secretary's role "in protecting the public interest bound up in Title IV", and pointed out that this interest was not the narrow one encompassed in the phrase "union member's lawyer" (footnote 6). Yet, the Secretary's concealment of the real basis for his claim of election illegality in the vaguely deceptive language of his letter to the union, is precisely of the character which one might expect from

some lawyers who, in an adversary role, seek tactical advantage while giving lip service to notice requirements.

Nor was the letter treated as a mere formality by the union. As a result of the union's explanation (App. 35a-36a), the Secretary withdrew one of the two proposed grounds for his Complaint. If the basis for the remaining ground had been fairly disclosed, it may be that it, too, would have dissipated in the light of the union's explanation. At any rate, the opportunity to explain or remedy, which was the stated policy of the Secretary, was also a part of the rationale which underlay the Congressional concern that unions have an opportunity to investigate and consider complaints before they are brought into the courts.

"Responsible union self-government", to which this Court adverted in *Local 125,* cannot be expected without some degree of responsibility on the part of the Secretary to make known the essential facts upon which the union can act responsibly. The Opinion of the Court below, in ignoring this duty of the Secretary in the administration of the Act, undermines a policy upon which it rests.

CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be granted.

Respectfully submitted,

GOODMAN, EDEN, ROBB, MILLENDER,
GOODMAN & BEDROSIAN,

By:.....
ERNEST GOODMAN,
Attorneys for Petitioner,
3200 Cadillac Tower,
Detroit, Michigan 48226,
965-0050.

Dated: